IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HONOURABLE SRI JUSTICE C. V. RAMULU

Writ Petition No.6323 of 2005

Dated: 24-08-2006

Between:

1. Shaik Ghouse Vali Basha S/o Khamruddin,
   aged about 38 years, Muslim,
   Occupation: Motor Mechanic,
   R/o 30/164-3, Malkapatnam
   Machilipatnam and another.

... Petitioners

and

1. The Deputy Registrar, Co-operative Societies,
   Machilipatnam, Krishna District and 5 others.

...
Respondents

ORDER:

This writ petition is filed seeking a *mandamus* declaring the action of the third respondent in proposing to conduct sale of H.No.30/164-3 (old) presently 30/165 of Malkapatnam, Machilipatnam by public auction on
28-03-2005 as arbitrary, illegal, capricious, violative of principles of natural justice and violative of Articles 14, 21, 300-A of the Constitution

of India.

2. The petitioners and the sixth respondent are brothers and the fifth respondent is their father. It appears the respondent Nos.5 and 6 borrowed some amounts from the third respondent Bank. When respondent Nos.5 and 6 failed to repay those amounts, the third respondent initiated proceedings under the Co-operative Societies Act, 1964 (for short, 'the Act') and obtained a certificate under Section 71 of the Act and filed E.P.No.53/2003-04 in Award No.482/2003-04 and the same was sought to be sold in public auction on 29-10-2004. On coming to know about the E.P. proceedings, the petitioners approached the first respondent herein and intimated that the property sought to be auctioned is a joint family property and the petitioners have substantial interest to the extent of half share in the said property and the same is the subject matter of a suit pending between them in O.S.No.678 of 2004 on the file of the Principal Junior Civil Judge, Machilipatnam.

3. Questioning the auction sought to be held on 29-10-2004, the petitioners herein filed W.P.No.19015 of 2004 before this Court, and the same was dismissed at the stage of admission on 14-10-2004. In view of the same, the petitioners filed a claim petition on 27-10-2004 before the fourth respondent under Rule 52 (21) (a) of the Andhra Pradesh Cooperative Societies Rules, 1964 (for short, 'Rules') raising several objections for attachment of the schedule property. According to the petitioners, the fourth respondent without following the procedure contemplated under the Rules, which are mandatory, erroneously held that the bank has every right to bring the schedule property to sale. Further, the Sale Officer has not investigated the claim properly and passed a cryptic order on 20-12-2004. Now the third respondent is demanding to sell the schedule property by way of

public auction scheduled to be held on 28-03-2005. Hence, the writ petition.

4. The fourth respondent filed a detailed counter asserting that the allegations of the petitioners against him are all false and not based on any evidence. According to sub-rule 21(A) of Rule 52 of the Rules, the Sale Officer shall investigate the claim or objection and dispose it of on merits, provided that no such investigation shall be made when the Sale Officer considers that the claim or objection is frivolous. The fourth respondent feeling that the objections raised by the petitioners are frivolous proceeded with the enquiry with the available record of the respondent Nos.3 and 4 and disposed of the claim petition. The claim petition was rejected after furnishing detailed reasons. Therefore, it cannot be said that the claim petition was not disposed of as required under law.

5. I have perused the impugned order dated 20-12-2004, whereunder the objections filed by the petitioner under sub-rule 21(A) of Rule 52 of the Rules were not considered. I am fully convinced that the order passed by the Sale Officer is not only cryptic but also perverse. He has assumed to himself so many things as to the system in Muslim families saying that there will be no joint family system in Muslim families, that during the lifetime of a Mohammedan father the sons by birth have no legal right over the property of the father, that the Judgment-debtor failed to discharge the loans and the immovable property sought to be sold by public sale on 29-10-2004 is his self acquired property in the E.P. as he purchased the site under sale dated 14-04-1977 and thereafter constructed the house and that the Judgment-debtor mortgaged schedule mentioned property in the claim petition to the Masulipatnam Cooperative Urban Bank Limited, Machilipatnam for the loan borrowed by him etc., The

objections were not properly discussed nor the order shows that the claim petitioner was heard in person. Therefore, the order dated 20-12-2004 passed in E.P.No.53 of 2003-04 by the fourth respondent is liable to be set aside and the matter has to be remitted to the fourth respondent for consideration of the entire matter afresh.

6. In the result, the writ petition is allowed and the order dated 20-12-2004 passed in E.P.No.53 of 2003-04 by the fourth respondent is set aside and the matter is remitted to the fourth respondent for consideration of the entire matter afresh after putting the petitioner on notice and hearing him personally. The fourth respondent shall dispose of the matter within a period of six weeks from the date of receipt of a copy of this order. In the meanwhile, the sale conducted during the pendency of the writ petition shall not be confirmed and the same shall be subject to the result of the claim petition.

JUSTICE C. V. RAMULU

Dt.24-08-2006
GLV